

GEOSEARCH, INC.

IBLA 79-43

Decided June 28, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying protest against oil and gas leases W 56952, W 57977, W 58979, W 59243, W 59245, W 59358, W 60034, W 60387, W 60414, W 60857, W 61810, W 62062, and lease offer W 62364.

Affirmed in part, vacated in part and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases:  
Bona Fide Purchaser

Where BLM does not reject simultaneous non-competitive oil and gas lease offers drawn with second priority after the issuance of the leases to the first drawees, the second drawees retain an interest which must be considered if the leases are cancelled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers. In those circumstances, BLM's decision dismissing the second drawees' protests against the continued validity of these leases for lack of interest must be vacated.

2. Oil and Gas Leases: Bona Fide Purchaser

A decision by BLM dismissing protests against the continued validity of the leases because the assignees are bona fide purchasers will be vacated where the record contains no statement by the assignees of oil and gas leases that they are bona fide purchasers, and the matter will be remanded so that BLM may join the assignees to the protest proceedings in order to give them the opportunity to show that they acquired

the interest as bona fide purchasers, and to give the protestant the opportunity to present prima facie evidence to the contrary, per 43 CFR 3102.1-2(c). Where the assignees have alleged that they are bona fide purchasers, it is up to the protestant to show prima facie to the contrary.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; Thomas W. Ehrmann, Esq., and William R. Hamm, Esq., Milwaukee, Wisconsin, for Resource Service Company, Inc.; C. R. Brown, Dallas, Texas, for May Petroleum, Inc.; Robert E. Gill, Jr., Esq., Houston, Texas, for Inexco Oil Company.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 3, 1978, Geosearch, Inc. (Geosearch), filed a protest against the validity of 13 oil and gas leases and one lease offer in the Wyoming State Office, Bureau of Land Management (BLM). 1/ These leases had been issued between December 1976 and May 1978 to offerors whose drawing entry cards were drawn with first priority in simultaneous oil and lease offer drawings held by BLM between September 1976 and December 1977. Geosearch stated in its protest that it had purchased the interests of individuals whose drawing entry cards were drawn with second priority in these simultaneous drawings, and that it therefore had an interest in protesting the continued validity of the leases. The 14 original lessees were apparently all clients of Fred Engle, d/b/a Resource Service Company, Inc. (RSC), at the time their offers were filed.

On October 5, 1978, BLM issued a decision denying this protest, in which it set forth the status of each individual lease against which Geosearch protested. Of the 14 leases involved in the protest, there had been assignments by lessees of full record title in 12. 2/ In the remaining two (W 59358 and W 62364), no assignments had yet been filed, and W 62364 had not been issued by BLM. BLM concluded:

Since all of the lease offers (with exception of one) have been issued and the majority of them assigned, we do not believe the number 2 drawees of these simultaneous oil and gas drawings have an interest to assign to Geosearch, Inc. See 43 CFR 3102.1-2, Bona Fide Purchaser regulation.

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1/ While W 62364 has not been issued by BLM, for convenience, we shall include it in all references to "leases," and shall include the offeror in all references to "lessees." The leases in question are W 56952, W 57977, W 58979, W 59243, W 59245, W 59358, W 60034, W 60387, W 60414, W 60857, W 61810, W 62062, and W 63053.

2/ These 12 leases are those set out in note 1, supra, excepting W 59358 and W 62364.

Geosearch filed a timely notice of appeal of BLM's decision as it affected 13 of the 14 leases concerned in the protest. Geosearch expressly excepted lease W 63053 from its appeal, and BLM's decision denying its protest against the continued validity of this lease is therefore final. As to the 13 remaining leases concerning which Geosearch has filed a notice of appeal, we vacate BLM's decision and remand the matter for further consideration.

[1] BLM did not reject the offers of those applicants whose drawing entry cards were drawn with second and third priority after the issuance of these leases to the offerors whose cards were drawn with first priority. Accordingly, the offers of second and third drawees remained on file. Also, as they were never officially notified that their offers were rejected, they never had opportunity to appeal. Thus, their offers remained viable. Geosearch, Inc., 40 IBLA 397 (1979); Geosearch, Inc., 39 IBLA 49, 51 n. 1 (1979); Beard Oil Co., 77 I.D. 166 (1970). It is true that if the leases had been assigned to bona fide purchasers, the second drawees could not have succeeded to the leases even if the first drawees' offers were defective. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2. However, the second drawees' offers will still have to be considered if the assignees were not bona fide purchasers and the leases are subject to cancellation.

[2] The records indicate that 11 of the leases 3/ against which appellant filed its protest have been assigned by the original lessees to third parties at various times prior to the initiation of appellant's protest. However, except as to leases W 61810 and W 62062, the records do not indicate that these assignees are bona fide purchasers.

As Geosearch points out in its statement of reasons, there is a possibility that the assignees knew that the underlying lease offers might be found to be defective, as it had become apparent at the time of these assignments that many of the lease offers of clients of RSC were defective, owing to its use of a service agreement which invested RSC with an undisclosed interest in leases won by its clients. Alfred L. Easterday, 34 IBLA 195 (1978) 4/; Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). As the lessees' addresses of record were RSC's address, the assignees would have had to contact RSC in order to negotiate the purchase of these leases and so would have known that the lessees were RSC clients. Moreover, except as to leases W 61810 and W 62062, there are no statements in the record from the assignees themselves that they purchased these lease interests without knowledge of the possibility that the underlying lease offers were defective.

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3/ These 11 leases are those set out in note 1, supra, excepting W 59358, W 62364, and W 63053.

4/ Appeal pending.

In such circumstances, it is appropriate to remand the matter to BLM to join the assignees to the protest proceedings in order to give them the opportunity to show that they hold and acquired the interests as bona fide purchasers without having violated any provisions of the bona fide purchasers laws. 43 CFR 3102.1-2(c); Geosearch, Inc., *supra*; Gus Panos, 21 IBLA 163 (1975); Tiffany Trust, 21 IBLA 160 (1975); Duncan Miller, A-30600 (Dec. 1, 1966); J. Penrod Toles, 68 I.D. 285 (1961). BLM should also allow Geosearch an opportunity to present prima facie evidence that the assignees are not bona fide purchasers. 43 CFR 3102.1-2(c). It will be unnecessary for BLM to join May Petroleum, Inc., and Inexco Oil Co. at the proceedings concerning, respectively, leases W 61810 and W 62062, as they have alleged on appeal that they are bona fide purchasers of these leases within the meaning of 43 CFR 3102.1-2. On remand, it is up to Geosearch to establish prima facie to the contrary.

We note that appellant's protest against the continued validity of leases W 59358 and W 62364 may have merit. These leases have not been assigned, so there is no question of the applicability of the protection of the bona fide purchaser provision. The underlying offers appear to have been made at a time when Engle has been found to have had undisclosed interests in his clients' offers in violation of 43 CFR 3102.7 and in possible violation of 43 CFR 3112.5-2(b). Frederick W. Lowey, 40 IBLA 381 (1979); Alfred L. Easterday, *supra*; Sidney H. Schreter, *supra*; Lola I. Doe, *supra*. On remand BLM should consider the merits of appellant's protest as to these two leases and, if necessary, request copies of the agreements between the lessees and RSC, so that it may determine if there was an interest in RSC at the time the lessees' offers were filed which should have been disclosed, or if RSC made prohibited multiple filings in the drawings in question.

Similarly, as BLM did not reach the merits of Geosearch's assertion that the underlying offers in the other leases were defective, BLM must make this determination as its first order of business on remand. Should it conclude that the subject leases were issued to offerors who were not qualified, it should then inquire into the bona fides of the assignees and take whatever action is indicated by its findings. This Board, as an appellate tribunal, ordinarily will not make the initial decision in such cases. 5/

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5/ It is also unnecessary for us to make an initial ruling on some of the other questions which may yet be presented in consequence of these protest proceedings, but which should not be lost to sight. Among these are:

(1) If the leases cannot be canceled because of the protection afforded a bona fide purchaser, is the overriding royalty reserved by assignors an "interest" in such leases within the meaning of 30 U.S.C. § 184 (1976) and subject to cancellation and sale by the Secretary?

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, vacated in part, and remanded for action consistent herewith.

Edward W. Stuebing  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

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fn. 5 (continued)

(2) If those whose offers were drawn with second priority are found to be the first qualified offerors entitled to have received the leases, and if they should seek and obtain a civil court judgment imposing a constructive trust for their benefit on the proceeds from the sale of the leases, would they have a right superior to the United States to the reserved overriding royalties?

(3) If the reserved overriding royalties are a "partial interest" or "less than the whole interest" within the context of 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(b), are they subject to administrative cancellation, or must judicial proceedings be initiated for that purpose?

